
(2012) 03 DEL CK 0268

In the Delhi High Court

Case No : Writ Petition (C) No. 1349 of 1998

A.K. Tyagi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-03-2012

Acts Referred:

Cantonments Accounts Code, 1924 — Rule 14, 72, 72
Cantonments Fund Servants Rules, 1937 — Rule 11, 11(2), 2
Central Civil Services (Conduct) Rules, 1964 — Rule 3
Constitution of India, 1950 — Article 226
Official Secrets Act, 1923 — Section 5

Citation : (2012) 03 DEL CK 0268

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : Manuj Aggarwal, for the Appellant; Ashwani Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner has challenged the order dated 23rd October, 1996 passed by the Appellate Authority, whereby the order of dismissal dated 22nd December, 1995 passed by the Cantonment Board, Meerut by resolution No.110 was modified to that of compulsory retirement. The petitioner has also sought quashing of order dated 18th September, 1997 passed by the Revisional Authority dismissing the revision of the petitioner against the order dated 23rd October, 1996. The petitioner has also sought that he should be reinstated and be granted all consequential benefits such as salary, increments, seniority, promotion etc. Brief facts to comprehend the disputes are that the petitioner was appointed as a Mate in the year 1963 in the office of the Cantonment Board, Meerut. Thereafter, while working as a Store Keeper he was placed under suspension by Cantonment Board Resolution No.231 dated 16th March, 1993 on the basis of a surprise physical verification of the stores conducted by a team constituted by the President of the Cantonment Board comprising of a nominated

member and an elected member of the board.

2. Pursuant to the surprise physical verification, the petitioner was placed under suspension and a charge sheet was served on the petitioner dated 27th May, 1993. The following charges were framed against the petitioner:-

(i) The appellant while functioning as Store Keeper violated provisions of Rule 72 of Cantonments Accounts Code 1924 and thus had committed gross misconduct, neglect of duty, indiscipline and loss of confidence, violating Rule 3 of the CCS Conduct Rules, 1964.

(ii) He had tampered with the official documents and made bogus entries in records to manipulate procurement and consumption of stores. Hence he had violated the provisions of rule 3 of CCS Conduct Rules, 1964 and failed to maintain devotion to duty, integrity and confidence.

(iii) He had fraudulently obtained confidential documents relating to the inquiry conducted by certain members of the Board into fraud and irregularities committed by him and other employees and without lawful authority misused the same in Court proceedings. He had thus violated the provisions of Section 5 of the Official Secret's Act 1923, disclosure of secrets/confidential information and betrayal of confidence in due discharge of his official duty.

3. As the petitioner denied the charges made against him, an enquiry officer, namely Lt. Col. R.C. Joshi was appointed by the Cantonment Board by resolution No.56 dated 18th July, 1993. Another charge sheet dated 22nd October, 1994 was also served on the petitioner charging him with the following charge:-

While functioning as Store Keeper, he had committed gross misconduct, dereliction of duty and prepared bogus vouchers for accounts section for payment regarding pending bills amounting to Rs. 3,39,491.43 pertaining to store items purported to have been received by him, had not been taken on respective stock registers which is tantamount to misappropriation of stores fraudulently. Thus, he was guilty of violation of Rule 3 of CCS (Conduct) Rules.

4. The enquiry officer, after conducting the enquiry, submitted a report dated 20th June, 1995 in respect of the charges which were framed by charge sheet dated 27th May, 1993. Enquiry report dated 10th July, 1995 pertaining to the charge framed on 22nd October, 1994 was also submitted on 24th July, 1995.

5. The copies of the enquiry reports were given to the petitioner for his representations. The petitioner thereafter made his representations which were considered by the disciplinary authority and the Cantonment Board, Meerut by CBR No.110 dated 22nd December, 1995 decided to dismiss the petitioner from the service holding him guilty of all the charges as proved before the enquiry officer.

6. The petitioner had filed a writ petition, being W.P No. 30580/1995, before the Allahabad High Court where the High Court at Allahabad passed the order dated

15th July, 1996 and directed the respondents that if the petitioner files an appeal within three weeks from 15th July, 1996 then the respondents shall consider his appeal and shall not dismiss it on the ground of being time barred and shall deal with the merits of the disputes in accordance with law.

7. Consequent to the order passed by the Allahabad High Court dated 15th July, 1996, the petitioner filed an appeal before the GOC-in-Chief, Central Command, Lucknow which was considered by the appellate authority and was disposed of by order dated 23rd October, 1996. The appellate authority set aside the order of dismissal passed by the Cantonment Board, Meerut against the petitioner and modified the penalty of dismissal to that of compulsory retirement considering the seriousness of the charges proved against the petitioner.

8. The Appellate Authority had also observed in its order that on going in to the merits of the case, it was clear that on receiving the report from the Board based on the findings of the surprise verification of the stores & works of the Board, the then GOC-in-Chief, Central Command/respondent No.2 had constituted a statutory committee under Rule 14 of the Cantonment Account Code, comprising of a Deputy Director and two Army officers by letter dated 10th August, 1993. The statutory committee appointed by respondent No.2 submitted its report dated 30th May, 1994 before the other charge sheet dated 22nd October, 1994 was issued against the petitioner and a few days (three days) after the first charge sheet dated 27th May, 1993 was issued against the petitioner.

9. The appellate authority considered the pleas and contentions of the petitioner and held that the charge regarding fraudulently obtaining confidential documents relating to the enquiry conducted by certain members of the board and violating the provisions of Section 5 of the Official Secrets Act, 1923 was not made out. The appellate authority in respect of the said charge had held as under:-

So far as the charge mentioned at para 2 (iii) supra regarding violations of the Official Secrets" Act is concerned, it is noted that the document in question, whose leakage was involved, was the confidential report of the surprise verification committee constituted by the Board. It was on the basis of this report that the official was suspended. In the normal circumstances, such a document is initially got signed by the official incharge of the stores at the conclusion of the physical verification and then it has to be made available to him during the disciplinary proceedings. It has come on record that the said document was made available to the members of the Board before the meeting convened to consider the report and was not returned by all the members. The appellant never handled the document in his official capacity. Apparently it reached the appellant through one of the members and was enclosed by him with the Writ Petition filed before the Hon"ble High Court in self-defence. This act by any account cannot be construed as a violation of the Official Secrets" Act. The appellant, therefore, cannot be punished for this act.

10. Regarding the misconduct, dereliction of duty and preparation of bogus

vouchers for accounts section, the appellate authority had held that the violation of the procedure by the petitioner stood established beyond doubt though no loss had been caused to the board on this account. The observations and findings of the appellate authority in respect of the remaining charges are as under:-

The charge in the second charge sheet as reproduced in para 3 (i) above pertains to the preparation of bogus vouchers for Accounts Section for payment regarding pending bills amounting to Rs. 3,39,491.43. The Inquiry, report has, however, brought it down to Rs. 2,37,988.18. The report mentions that they relate to the period of 3-4 years and include some amount for the period of the previous Store Keeper namely Shri Bhagwan Das Parashar.

The procedure for payment of such bills as prescribed in the Cantt. Account Code, 1924 under rule 73 is reproduced below: "Before a bill is passed for payment, the officer passing the bill shall see the articles billed for have been entered in the appropriate stock book or the property register, as the case may be, and that a reference to the entry in the register is quoted in the bill".

Therefore, whatever payment vouchers may have been prepared by the Store Keeper, whenever they were submitted to the Accounts section for payment, the payment could not have been effected unless the concerned official had verified that the items received have been properly taken on charge and cross entries made on the bill. No payment had been made against these items nor there was any chance of payment unless they were entered and accounted for in the books. Thus, there was no loss to the Board on this account. So far as preparation of these vouchers is concerned, the appellant during the course of inquiry had stated that these vouchers were kept pending with him for various reasons such as rejection of stores received, non-completion of stock books as they were taken into custody after the surprise verification of stores, non-completion of stock book by his predecessor etc. Unless bogus bills are presented for payment, the malafides of the intentions cannot be established and the defaulting official is likely to get the benefit of doubt before any legal forum. However, in the second inquiry as well, violation of procedure stand established beyond doubt.

11. The appellate authority repelled the contention of the petitioner that since he was holding a non supervisory post his disciplinary authority was the Cantonment Executive Officer and the Cantonment Board was the appellate authority, by observing that on the date of suspension, the petitioner was holding the post of the second grade clerk (though designated as Store Keeper) to which post appointment could be made on selection only by the Board and, therefore, on conjoint reading of Rule 2(aa) read with Rule 2(cc) and Rule 11(a) of CFSR, 1937, the Board was the competent authority to initiate and finalize the disciplinary proceedings against the petitioner. The appellate authority also declined to accept the plea of the petitioner that the President of the Board could not constitute the ad-hoc committee for the surprise physical verification for the stores and that only the board could have constituted such a committee. The appellate authority also repelled the pleas of the petitioner that the disciplinary

authority had failed to furnish the list of witnesses along with the charge sheet and that Brig. Johar was biased and prejudiced against the petitioner and that the enquiry officer Lt. Col. R.C. Joshi was a re-employed Army Officer working under the direct control of the then PCB (President Cantonment Board) and was thus, under his influence and obligation. The appellate authority also did not find any merit in the argument of the petitioner that the enquiry officer was working directly under Col. V.K. Azad who was also in the team which carried out the surprise physical verification of the stores and, therefore, he could not have given a report contrary to the report of Col. V.K. Azad and that the enquiry officer was an outsider not connected with the Cantonment Board administration and thus could not have been appointed to do the inquiry.

12. The appellate authority held that since the petitioner has been only found responsible for the shortage and procedural irregularities, therefore, awarding the punishment of dismissal would be too severe. The appellate authority further considered the other major penalties under Rule 11(2) of the Cantonment Funds Servant's Rules, 1937 and held that the penalty of reduction in pay would be too light a punishment and that the penalty of removal from service as mentioned at para 14(iv) and the penalty imposed by the disciplinary authority of dismissal from service is more or less the same. Judging the seriousness of the charges proved against the petitioner, the appellate authority found the punishment of compulsory retirement suitable and sufficient and thus modified the order of the disciplinary authority from dismissal to that of compulsory retirement from service as against the petitioner.

13. Aggrieved by the order of compulsory retirement dated 23rd October, 1996 imposed by the appellate authority, the petitioner filed a revision petition which was considered by the respondents and was rejected by order dated 18th September, 1997 holding that considering the evidence, both documentary as well as oral, the order dated 23rd October, 1996 passed by the GOC-in-C, Central Command, Lucknow (appellate authority) was in order.

14. The petitioner has challenged the order of the appellate authority dated 23rd October, 1996 and the order dated 18th September, 1997 passed by the revisional authority inter-alia on the grounds that the petitioner was not allowed to cross examine the witnesses; that in view of the report dated 30th May, 1994 of the statutory committee appointed by the respondent No.2 the petitioner ought to have been absolved of all the charges made against him; that the punishment is disproportionate to the charges established against the petitioner; that the respondent No.2 had usurped the powers and had ignored the findings of the statutory committee constituted by the respondent No.2 who had given a report dated 30th May, 1994. The petitioner also contended that the Allahabad High Court had erred in treating the petitioner at par with the supervisory grade employees without going into the merits of the case and that the enquiry proceedings were in violation of the principles of natural justice.

15. The writ petition is contested by the respondents who filed a counter affidavit

dated 20th February, 2000 of Sh.Harish Prasad, Cantonment Executive Officer, refuting the pleas and contentions raised by the petitioner. The respondents disclosed that the petitioner was appointed as a Mate in 1963 in the office of the Cantonment Board, Meerut, however, he was promoted as a Grade II Clerk in the year 1964 and again promoted as Senior Grade Clerk in the year 1979 and from 1986 he was assigned the job of Store Keeper, as the post of Store Keeper and that of the Senior Grade Clerk were of the same scale.

16. Respondents averred that a team was constituted by the President of the Cantonment Board for surprise physical verification and since the petitioner was found to have committed irregularities he was placed under suspension by the Cantonment Board resolution No.231 dated 16th March, 1993. The respondents also referred to the charge sheet dated 27th May, 1993 and the appointment of enquiry officer to investigate into the matter and also issuance of another charge sheet stipulating an additional charge on 22nd October, 1994.

17. The respondents relied on the enquiry officer's report dated 20th June, 1995 in respect of the first charge sheet and the report dated 10th July, 1995 pertaining to the second charge sheet. The respondents further substantiated the order passed by the appellate authority modifying the order of dismissal to that of compulsory retirement and the dismissal of the revision petition filed by the petitioner against the order of the appellate authority/respondent No.2.

18. This Court has heard the learned counsel for the parties and have also perused the writ petition, the counter affidavit and the rejoinder filed by the parties and the documents annexed therewith. The plea of the petitioner that the Cantonment Board was not the disciplinary authority cannot be accepted as the petitioner had been promoted to the post of Senior Grade Clerk by resolution dated 30th April, 1979. The competent authority for the post of Senior Grade Clerk is the Cantonment Board and consequently the plea that the petitioner could not be tried by the Cantonment Board cannot be accepted. The appellate authority had also held that on the date of suspension of the petitioner he was holding the post of second grade Clerk (though designated as Store Keeper) for which appointment could be made only by selection by the board and, therefore, considering the nature and the status of the post held by the petitioner, it cannot be held that the Cantonment Board was not competent to initiate and finalize the disciplinary proceedings against the petitioner.

19. The next plea of the petitioner is that he was not allowed to cross examine the witnesses during the enquiry proceedings. In the appeal filed by the petitioner against the order of dismissal no such plea had been raised by the petitioner that he was not allowed to cross examine the witnesses. The enquiry officer in the enquiry report has rather crystallized the pleas raised by the defence assistant on behalf of the petitioner. In para 10(h), the plea of the petitioner as propounded by the defence assistant on his behalf was that the prosecution witnesses had confirmed during his cross examination that some bills could be pending due to rush of work and that the stock ledgers were complete

at the close of financial year. The point raised by the defence assistant on behalf of the petitioner is as under:-

(h) Prosecution witness has confirmed in cross-examination that some bills can be pending due to rush of work and the stock ledgers are completed at the close of financial year.

20. From the point raised before the enquiry officer on behalf of petitioner it is thus apparent that the prosecution witnesses had been cross examined. If the witnesses before the enquiry officer were cross examined, then the only inference that can be drawn in the facts and circumstances is that the petitioner was allowed to cross examine the witnesses and the witnesses were cross examined. The plea of the petitioner is not that he was allowed to cross examine some of the witnesses and not allowed to cross examine certain other witnesses. No such plea has been raised nor any such details have been given as to which witnesses had been allowed to be cross-examined and which witnesses were not allowed to be cross examined by the petitioner. In the circumstances, the plea on behalf of the petitioner that he was not allowed to cross examine the witnesses and the enquiry proceedings are vitiated on account of it, cannot be sustained. Perusal of the grounds raised in the writ petition also reveals that no such plea has been raised on behalf of the petitioner that he was not allowed to cross examine the witnesses during the enquiry proceedings. Though the petitioner has alleged that enquiry proceedings were conducted by the respondents in violation of the principles of natural justice and the due process of law, but how the enquiry proceedings were in violation of the principles of natural justice and due process of law has not been elaborated.

21. The learned counsel for the petitioner has laid great emphasis on the report of the statutory committee dated 30th May, 1994, however, this is not disputed that after the report dated 30th May, 1994 a regular enquiry was conducted after the charges were framed against the petitioner. The enquiry conducted by the committee appointed by respondent No.2 was rather a preliminary enquiry and on the basis of the findings in the preliminary enquiry which have not been put to the witnesses who appeared during the regular enquiry, the petitioner cannot challenge the regular enquiry report on the basis of report given by the committee constituted by the respondent No. 2. The enquiry officer has detailed the witnesses examined by the respondents and the witnesses produced by the petitioner which were cross examined by the presenting officer. The enquiry officer has also detailed the defaults in the accounts attributable to the petitioner and has also considered the points raised in detail by the defence assistant on behalf of the petitioner and has ultimately given his detailed finding. It was held that the case of the respondents merely rests on the documentary evidence which includes the list of pending bills; the copies of payment vouchers allegedly prepared by the petitioner for the accounts section and the indents and the stock books wherein what the store had received and issued were reflected. The plea of the petitioner that some of the bills were pending on account of rejection of

the items was repelled as no documentary evidence or corroborative evidence from any of the witness was led to establish that the stores as detailed in the enquiry report were rejected. The enquiry officer has rather held that the payment vouchers show that the petitioner had initialed the column in the receipt of store in all those cases. In respect of the plea that certain items were received from the supplier which were detailed in para 29 of the enquiry report, it was observed that even if it is accepted that the said items allegedly supplied by the suppliers were received in the store, still the petitioner neither had taken these on charge in his stock books nor had he proved their further disposal through any indented receipt. The enquiry officer has given a detailed report and the counsel for the petitioner has not shown any such relevant facts which have not been taken into consideration by the respondents or which reveal that the inferences of the enquiry officer were based on his own assumptions. Nothing has been shown whereby it can be inferred that the relevant testimonies have been rejected by the enquiry officer on the basis of surmises and conjectures.

22. It is not necessary for the High Court in exercise of its writ jurisdiction to interfere in every case where there is violation of rights. For issuing a writ for any other purpose under article 226 of the Constitution of India, it has always been in the discretion of the High Court to interfere or not, depending upon the facts and circumstances of each case. In *Shangrila Food Products Ltd. and another Vs. Life Insurance Corporation of India and another*, , the Supreme Court had held that " the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. The jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principle of equity. One of the ends of the equity is to promote honesty and fair play.

23. This also cannot be disputed that the Court ordinarily has no jurisdiction to go into the correctness of the truth of the charges nor can it take over the evidence of the disciplinary authority. The High Court in discharge of its power under Article 226 of the Constitution of India cannot sit in appeal on the findings of the disciplinary authority and assume the role of the appellate authority. It cannot interfere with the findings of the fact arrived at in the disciplinary proceedings except in the case of malafides or perversities i.e. where there is no evidence to support a finding or where the finding is such that anyone acting reasonably or with objectivity could not have arrived at the same or where a reasonable opportunity has not been given to the charged officer to defend himself or if it is a case where there has been non application of mind on the part of the enquiry authority or if the charges are vague or if the punishment imposed is shocking to the conscience of the Court. Reliance for this can be placed on *State of U.P. and Others Vs. Raj Kishore Yadav and Another*, ; *V. Ramana Vs. A.P.S.R.T.C. and Others*, ; *R.S. Saini Vs. State of Punjab and Others*, ; *Kuldeep Singh v. The Commissioner of Police, JT 1998 (8) SC 603*; *B.C. Chaturvedi Vs. Union of India and others*, ; *Transport Commissioner, Madras-5 Vs. A. Radha*

Krishna Moorthy, ; Government of Tamil Nadu and another Vs. A. Rajapandian, ; Union of India (UOI) and Others Vs. Upendra Singh, and State of Orissa & Anr. v. Murlidhar Jena, AIR 1963 SC 404.

24. The grounds on which administrative action is subject to judicial review are "illegality"; "irrationality" and "procedural impropriety". Whether action falls within any of the categories has to be established by the charged official and mere assertion in this regard may not be sufficient. To be termed as "irrational" it has to be established that on material, it is a decision "so outrageous" that it is in total defiance of logic or moral standards.

25. If the power is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power shall be vitiated. Exercise of power will be set aside if there is manifest error in the exercise of such power or the exercise of power is manifestly arbitrary. To arrive at a decision on "reasonableness" the court has to find out if the respondents have left out relevant factors or taken into account irrelevant factors. It was held in M.V. Bijlani Vs. Union of India (UOI) and Others, , that the Judicial review is of decision making process and is not the re-appreciation of evidence. The Supreme Court in para 25 at page 96 had held as under:

25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

26. The petitioner also contended that the Allahabad High Court had erred in treating the petitioner at par with the supervisory grade employees without going into the merits of the case and that the enquiry proceedings were in violation of the principles of natural justice. The petitioner cannot challenge the decision of the High Court of Allahabad in the present petition, pursuant to which he had filed an appeal which was considered by the Appellate Authority and his punishment of dismissal from service was modified to that of compulsory retirement. If the petitioner was aggrieved by order of Allahabad High Court, the petitioner ought to have challenged the same. This Court cannot sit in appeal over the decision of the Allahabad High Court in the present facts and circumstances and the pleas of the petitioner in this regard cannot be accepted.

27. In the totality of facts and circumstances, the learned counsel for the petitioner has failed to make out any illegality, irrationality or procedural impropriety in the actions of the respondents. The punishment of compulsory retirement imposed by the appellate authority modifying the order of dismissal passed by the disciplinary authority, cannot be held to be such which would shock the conscience of the Court or which a reasonable person would not draw. The appellate authority/respondent No.2, considering the facts and circumstances, held that the penalty of dismissal and removal is disproportionate and that on the other hand the penalty of reduction to a lower stage in the time scale of pay is too light and thus after careful consideration it has awarded the penalty of compulsory retirement by modifying the penalty of dismissal awarded by the disciplinary authority. In the entirety of the facts and circumstances, the punishment awarded cannot be held to be disproportionate so as to entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition in the facts and circumstances is without any merit and it is, therefore, dismissed. Parties are however, left to bear their own costs.